

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

George Whitfield, *et al.*,

Plaintiffs,

v.

Case No. 13-11070

The Pep Boys-Manny, Moe & Jack, *et al.*,

Sean F. Cox

United States District Court Judge

Defendants.

**ORDER DISMISSING DEFENDANTS MICHAEL ODELL, RAY ARTHUR,
GLEN ROBINSON, AND TROY FEE, WITHOUT PREJUDICE,
FOR FAILURE TO EFFECT TIMELY SERVICE**

On February 6, 2013, Plaintiffs filed this action against multiple defendants in state court.

The action was removed to this Court on March 8, 2013.

Rule 4(m) of the Federal Rules of Procedure provides, in pertinent part, that if “a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action *without prejudice* against that defendant or order that service be made within a specified time. Fed. R. Civ. P. 4(m) (emphasis added).

As of March 17, 2013, the docket reflected that Defendants Michael Odell, Ray Arthur, Glen Robinson, and Troy Fee, has not been served. Accordingly, pursuant to Fed. R. Civ. P. 4(m), this Court issued an Order Directing Plaintiffs To Show Cause (D.E. No. 37) why those four Defendants should not be dismissed for failure to effect timely service.

On March 25, 2014, Plaintiffs responded that they do not object to those four Defendants being dismissed without prejudice. (D.E. No. 40).

On that same day, March 25, 2014, Defendants filed a response to Plaintiffs' response to the show cause order, asserting that the claims against those four Defendants should be dismissed with prejudice. Defendants contend that dismissal with prejudice is appropriate pursuant to Fed. R. Civ. P. 41(b). Rule 41(b) provides:

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, *a defendant may move to dismiss the action or any claim against it*. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

Fed. R. Civ. P. 41(b) (emphasis added).

Here, Defendants did not move to dismiss the four Defendants at issue for failure to prosecute. Rather, pursuant to Fed. R. Civ. P. 4(m) this Court *sua sponte* ordered Plaintiffs to show cause why these four Defendants should not be dismissed for failure to effect timely service. As such, this Court concludes that dismissal without prejudice is appropriate.

IT IS ORDERED that Plaintiffs' claims against Defendants Michael Odell, Ray Arthur, Glen Robinson, and Troy Fee are DISMISSED WITHOUT PREJUDICE for failure to effect timely service upon them.

IT IS SO ORDERED.

S/Sean F. Cox

Sean F. Cox

United States District Judge

Dated: April 2, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on

April 2, 2014, by electronic and/or ordinary mail.

S/Jennifer McCoy
Case Manager